

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

GARY SPANO, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 06-CV-743-DRH
)	
THE BOEING COMPANY, et al.,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO DISMISS OR FOR
SUMMARY JUDGMENT BASED ON STATUTE OF LIMITATIONS**

Come now defendants and hereby move as follows:

1. Defendants move, pursuant to Rule 12(b)(6), F.R.C.P., for an order dismissing with prejudice plaintiffs' mutual fund claim set forth at paragraphs 122-37 of the Second Amended Complaint ("SAC") because, as disclosed on the face of that pleading, the mutual fund claim is barred by the six-year statute of limitations appearing at § 413(1) of ERISA (29 U.S.C. § 1113(1)).

2. Defendants also move, pursuant to Rule 56, F.R.C.P., for an order granting summary judgment in their favor and against plaintiffs on the mutual funds claim, the company stock fund claim (SAC ¶¶ 81-117) and the active management claim (SAC ¶¶ 138-41) because the uncontroverted evidence of record demonstrates that all three of those claims are barred by the same statute of limitations.

3. In support of this motion, defendants submit the Declarations of Gary R. Wilson and Carrie E. Byrnes, each with attached exhibits, and their accompanying Memorandum in Support of this motion.

WHEREFORE, defendants move this Court for an order granting their motion to dismiss with prejudice plaintiffs' mutual fund claim set forth at paragraphs 122 through 137 of the Second Amended Complaint and granting their motion for summary judgment in their favor and against plaintiffs on the mutual fund claims, on the company stock fund claim appearing at SAC ¶¶81-117, and on the active management claim at SAC ¶¶ 138-41.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered via the Court's electronic filing system and by hand-delivery this 9th day of September, 2008 to :

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